

James D. Newbold  
Assistant Attorney General  
Revenue Litigation Bureau  
100 W. Randolph Street  
Chicago, IL 60601  
(Tel) (312) 814-4557  
(Fax) (312) 814-3589  
[James.Newbold@illinois.gov](mailto:James.Newbold@illinois.gov)  
Attorney for Illinois Department of Revenue

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	
	)	<b>Case No. 01-01139 (JKF)</b>
<b>W.R. Grace &amp; Co., et al.,</b>	)	<b>Chapter 11</b>
	)	<b>Hearing: May 23, 2011 @ 9:00 a.m.</b>
<b>Debtors.</b>	)	

**RESPONSE OF ILLINOIS DEPARTMENT OF REVENUE TO DEBTOR'S OBJECTION  
TO CLAIM No. 150**

The Illinois Department of Revenue ("IDOR"), by its attorney, Lisa Madigan, Illinois Attorney General, responds to Debtor's objection to Claim No. 150 as follows:

1. IDOR filed a withholding tax claim for various quarters in 1976 and 1984 through 1989. The claim was filed because, according to IDOR's records, W.R. Grace ("Debtor") failed to file withholding tax returns or remit the related taxes during 1976 and, after doing so during the intervening years, again failed to file withholding tax returns or remit the taxes during the period from 1984 through 1989.

2. Based on the Debtor's failure to file returns and pay the related taxes, IDOR estimated liability for these "open" quarters by projecting liability from other tax periods for which returns were filed and, based on this projected liability, filed claim No. 150.

3. In its objection, the Debtor asserts that the liability claimed in Claim 150 is unenforceable as IDOR failed to issue Notices of Deficiency (NODs) for these quarters within the statute of limitations of 35 ILCS 5/905(j).

4. While IDOR acknowledges that it did not issue NODs, the Debtor misconstrues the effect and application of the statute of limitations set forth in 35 ILCS 5/905(j). Section 905(j) applies to establish a statute of limitations in those situations where the taxpayer filed returns. See *Mitchell v. Department of Revenue*, 596 N.E.2d 31, 32 (Ill. App. 1992). Where a taxpayer fails to file returns, there is no statute of limitations. *Id.*, see also 35 ILCS 5/905(c). Therefore, IDOR's claim cannot be disallowed on this basis.

5. Unless the Debtor files returns for the "open" quarters or can demonstrate that it did not have Illinois employees during these quarters and therefore had no liability, the Court should allow IDOR's claim as filed.

WHEREFORE, IDOR requests that the Court enter an order (1) denying the Debtor's objection and, unless the Debtor files returns or demonstrates that it did not have Illinois employees during the applicable quarters, (2) allowing IDOR's claim in the amount as filed.

ILLINOIS DEPARTMENT OF REVENUE  
BY: LISA MADIGAN  
Illinois Attorney General

BY: /s/ James D. Newbold  
JAMES D. NEWBOLD  
Assistant Attorney General  
Revenue Litigation Bureau  
100 W. Randolph Street  
Chicago, IL 60601  
(312) 814-4557

### **CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he served a copy of this **RESPONSE** on:

Adam Paul  
Kirkland & Ellis  
Fax (312) 862-2200

Janet Baer  
Baer Higgins Fruchtmann  
Fax (312) 577-0737

James O'Neill  
Pachulski Stang  
Fax (302) 652-4400

Lewis Kruger  
Strook Strook & Lavan  
Fax (212) 806-6006

Michael Lastowski  
Morris & Heckscher  
Fax (302) 657-4901

Scott Baena  
Bilzin, Sumberg  
Fax (305) 374-7593

Michael Joseph  
Ferry & Joseph  
Fax (302) 575-1714

Elihu Inselbuch  
Caplin & Drysdale  
fax (212) 644-6577

Marla Eskin  
Campbell & Levine  
Fax (302) 426-9947

Thomas Mayer  
Kramer Levin  
Fax (212) 715-8000

Teresa Currier  
Saul Ewing  
Fax (302) 421-6813

Richard Wyrton  
Orrick Herrington  
Fax (202) 339-8500

John Phillips  
Phillips Goldman  
Fax (302) 655-4210

David Klauder  
Office of US Trustee  
Fax (302) 573-6497

Karl Hill  
Seitz, Van Ogtrop  
Fax (302) 888-0606

Alan Rich  
Fax (214) 749-0325

Michael Giabbotto  
CNA Companies  
Fax (202) 346-4444

by faxing a copy from Chicago, Illinois on May 6, 2011.

/s/ James D. Newbold  
James D. Newbold